

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P.No.24798 of 2011

and

MP.Nos.1 and 2 of 2011

D.Dinesh

... Petitioner/1st Accused

vs.

State Rep. By
Food Inspector,
Dn.126, Zone-VIII,
Corporation of Chennai,
Chennai.

... Respondent /Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in S.M.M.F.No.21 of 2011, on the file of the XX Metropolitan Magistrate, Chennai, quash the proceedings therein.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondent : Mr.B.Ramesh Babu
Government Advocate (CrI.Side)

JUDGMENT

The petitioner herein has filed the above criminal original petition seeking to quash S.M.M.F.No.21 of 2011 on the file of the learned XX Metropolitan Magistrate, Egmore, Chennai. The said complaint found filed by the respondent under section 7 (ii), 16(i) (a) (i) r/w 2(ix) (k) of Prevention of Food Adulteration Act, 1954 (herein after referred as "PFA Act") and Rule 32 (a), (3), 36(7), 37 of PFA Rules, 1955 charging the petitioner herein for an alleged misbranding of a coffee product proposed for sale in "More" super market retail Ltd to which the petitioner was erstwhile Manager at the time of inspection.

2.The facts involved in this case as follows that the respondent/complainant is the Food Inspector of Zone 8, Corporation of Chennai. On 4.12.2009 an inspection was conducted by him in "More" Super Market Retail Ltd, situated in door No.24/1, Dr.Nair Road, T.Nagar, Chennai.

3.On suspicion that the "Leo pure filter coffee" powder kept for sale in the said market would be adulterated, a sample

was taken by the respondent and the same was subjected to lab Analysis. On Lab analysis it was found that the said packet were misbranded such that containing erroneous particulars as to composition and the ratio of ingredients and as well the nutrition value. Therefore the above complaint came to be filed under PFA Act 1954 as against the petitioner and 2 others such that arraying them to be the vendor, nominee of license and the manufactures as accused 1 to 3 respectively.

4. According to the petitioner, the complaint on hand is an abuse of process of law as the petitioner was merely working as Manager of the "More" super market retail Ltd. In actual the 3rd accused is the manufacturer of coffee powder and the 2nd accused was the in charge of sales. However, the above complaint was launched against the petitioner also, presently the petitioner is pursuing some other employment as he already resigned his job.

5. Yet another contention is that the complaint is liable to be quashed due to delay in serving the notice under section 13 (2) of P.F.A. Act, as he was served notice on 28.06.2011 though the sample was taken as early as on 4.12.2009.

6. Therefore he has come with the instant petition to quash the above complaint proceedings in S.M.M.F No.21/2011.

7. I heard Mr.C.S.Dhanasekaran, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

8. The learned counsel for the petitioner would submit that the petitioner is at no fault and the allegations in complaint are untrue and untenable.

9. In fact the petitioner was only a Manager of "More" super market retail Ltd and he is no way connected with active purchase on selling of the above alleged coffee powder packets. More so the petitioner has resigned the job and now employed in some other concern.

10. If at all any prosecution has to be instituted, the same can be done only as against the manufacturer and the license holder. Whereas the case on hand merely because the petitioner was found to be the Manager, he is roped into the said complaint which would be an abuse of process of law. Again there can be no mensrea attributed towards the petitioner.

11. For yet another reason, the complaint on hand is liable to be quashed for want of compliance with statutory formalities, in this regard it is the prime contention of the learned counsel

for petitioner is that though alleged sample was taken on 4.12.2009, the notice under section 13(2) of the P.F.A. Act was given only on 28.06.2011.

12. There is a delay of 1½ years and the prosecution was initiated in the month of June 2011. Due to the delay in serving the notice under section 13(2) of the P.F.A. Act his choice for sending the sample to the central public analyst has been curtailed and he has been deprived from applying for the analysis of the 2nd sample before 28.6.2011, by which time the 2nd sample of the coffee powder had deteriorated and incapable of being analyzed. Thus the valuable right of the petitioner had been taken away and accordingly he is put to serious prejudice as having lost his right of having the 2nd sample analyzed.

13. Per contra, the learned counsel for the respondent would submit that only adhering with all the legal formalities, the prosecution was launched against the petitioner. It is his further contention that the sample were properly taken and sealed as per Rules and regulations.

14. No doubt that the petitioner had a right for asking second Analyze report as per the Act. In the case on hand admittedly there is a delay of more than one year from the date of taking first sample. It is also significant to note from the report of the public analyst dated 08.01.2010, the date of expiry the coffee powder was labeled to be nine months from the date of manufacture.

15. The records reveal that the product was seized on 04.12.2009 and analysis was done on 30.12.2009. Therefore even by taking into account of the day of seizure i.e., 04.12.2009 as the cut-off date, the expiry date would fall by 04.08.2010.

16. Whereas, in the instant case on hand, Notice under section 13(2) of PFA Act is found served on 28.06.2011 which is beyond the period of one year from the date of seizure of the article. Therefore there is no doubt that there is an apparent lapse on the part of the prosecution in not providing an opportunity to the petitioner to avail his chance to apply for the analysis of the second sample.

17. In this regard it would be useful to refer to a decision of the Hon'ble Apex Court made in the matter of Girishbhai Dhayabhai Shah Vs C.C.Jani and another reported in 2012(2) SEC (CRI) 270 dealing with under section 13(2) of the P.F.A. Act 1954.

18. It would also be useful to refer to the following decisions:

1. Bhusha Prasa, Managor-Quality and regulatory operations of the general mills India Private Ltd., Mumbai and another vs. K. Ravichander reported in 2009 1 MLJ (cri) 843.

2. Baskar Vembu, Indian Inhabitant vs State of Tamil Nadu reported in (2008) 3 MLJ (cri) 779.

All the above decisions clearly enunciate that the valuable right of the petitioner/accused to apply for the analysis of the second sample can never be deprived off and taking away of such valuable right will greatly prejudice the accused.

It is equally important to state that the prosecution initiated contrary to the above statutory provision is liable to be quashed in line with the above decisions.

19. For the foregoing reasons and having found that the decision of the Hon'ble Apex Court stated above squarely applies to the case of the petitioner and so, the complaint on hand is liable to be quashed.

20. In the result, this criminal original petition is allowed and S.M.M.F.No.21 of 2011 on the file of the learned XX Metropolitan Magistrate, Egmore, Chennai shall stand quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The XX Metropolitan Magistrate,
Chennai.

2. The Food Inspector,
DN.126, Zone VIII,
Corporation of Chennai,
Chennai.

+1cc to Mr.Dhanasekaran, Advocate, S.R.No.22644

CrI.O.P.No.24798 of 2011 and
M.P.Nos.1 and 2 of 2011

rrs 29/10/2018